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Attorneys for Defendant
AIR & LIQUID SYSTEMS CORPORATION,
successor by merger to BUFFALO PUMPS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPHINE BANKS, individually and
on behalf of the ESTATE OF WILLIAM
HENRY BANKS, deceased; JAMIE
BANKS, NUEVOE STRAIN, CRISELA
BANKS, LEEANN MOLLENIDO, and
WILLIAM J. BANKS as legal heirs to
WILLIAM HENRY BANKS, deceased,

Plaintiffs,

v.

3M COMPANY; AIR & LIQUID
SYSTEMS CORPORATION,
successor by merger to BUFFALO
PUMPS, INC.; ARMSTRONG
INTERNATIONAL INC.; AURORA
PUMP COMPANY; BORG
WARNER MORSE TEC, LLC as
successor by merger to BORG
WARNER CORPORATION;
CARRIER CORPORATION; CRANE
CO.; CROWN CORK & STEEL, as
successor in interest to MUNDET
CORK; FMC CORPORATION as

CASE NO.

Los Angeles County Superior Court
Case No. 22STCV26057

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
SECTIONS 1442 AND 1446**

1 successor in interest to PEERLESS
 2 PUMP CO.; GENERAL ELECTRIC
 3 COMPANY; GENUINE PARTS
 4 COMPANY; GOODYEAR TIRE
 5 AND RUBBER COMPANY;
 6 GOULDS PUMPS, LLC; GREEN
 7 TWEED & CO.; HILL BROTHERS
 8 CHEMICAL COMPANY;
 9 HONEYWELL INTERNATIONAL
 10 INC., fka AlliedSignal Inc., Successor-
 11 In-Interest to The Bendix Corporation;
 12 IMO INDUSTRIES, INC.;
 13 METALCLAD INSULATION, LLC;
 14 PARKER-HANNIFIN
 15 CORPORATION; SOCO WEST
 16 INC., f/k/a Brenntag West, Inc.,
 17 f/k/a/ Soco-Lynch Corporation,
 18 individually and as successor in
 19 Interest to Western Chemical &
 20 Manufacturing Company; SYD
 21 CARPENTER MARINE
 22 CONTRACTOR, INC.; UNION
 23 CARBIDE CORPORATION;
 24 VELAN VALVE CORP.; VIACOM
 25 CBS, INC.; WARREN PUMPS
 26 LLC; WEIR VALVES &
 27 CONTROLS USA, INC., f/k/a
 28 Atwood & Morrill Co., Inc.; and
 THE FIRST through THREE
 HUNDREDTH DOES, inclusive;

Defendants.

TO THE CLERK AND THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. sections 1442 and 1446, defendant AIR AND LIQUID SYSTEMS CORPORATION, successor by merger to BUFFALO PUMPS, INC. (“BUFFALO PUMPS”) individually hereby

1 gives notice of the removal of this action, originally filed in the Los Angeles
 2 County Superior Court, to the United States District Court for the Central District
 3 of California based on the following grounds:

4 1. **Jurisdiction.** This Court has subject matter jurisdiction over this case
 5 because the claims involve a person, BUFFALO PUMPS, acting under the
 6 authority of an officer or agency of the United States. 28 U.S.C. § 1442; *Freiberg*
 7 *v. Swinerton & Walberg Property Services, Inc.* 245 F.Supp.2d 1144, 1150 (2002).

8 2. **Intradistrict Assignment.** The claims are pending within the District
 9 and the Division of this Court. Therefore, the claims should be assigned to this
 10 Division.

11 3. **Timeliness.** This Notice of Removal is timely because it was filed
 12 within thirty (30) days of formal service of the Summons and Complaint upon
 13 BUFFALO PUMPS, consistent with the requirements of 28 U.S.C. section 1446(b)
 14 and Rule 6 of the Federal Rules of Civil Procedure.

15 4 **Background.** On or about August 11, 2022 plaintiffs filed their
 16 Complaint against approximately 26 defendants, including BUFFALO PUMPS, in
 17 the Superior Court of the State of California, County of Los Angeles.

18 5. In the Complaint, Plaintiff Josephine Banks and the heirs of William
 19 Henry Banks (“Plaintiffs”) allege that William Henry Banks was exposed to
 20 asbestos containing products manufactured by a number of defendants, including
 21 BUFFALO PUMPS, while serving in the U.S. Navy as a machinist mate aboard
 22 various U.S. Navy vessels from 1961 to 1984. (A true and correct copy of the
 23 Summons and Complaint is attached as **Exhibit 1** to this Notice of Removal.)

24 6. Any equipment manufactured for the U.S. Navy by BUFFALO
 25 PUMPS to be used aboard U.S. Naval vessels was manufactured under the direction
 26 and control of a federal officer. (See, generally, Declaration of Ret. Adm. Roger
 27 Horne, **Exhibit 2** and the Declaration of Martin Kraft, **Exhibit 3**.) BUFFALO
 28 PUMPS manufactured and designed equipment sold to the Navy according to the

precise, detailed specifications of the U.S. Navy. The United States Navy enforced compliance with those design specifications and no aspect of the design of that equipment escaped the close control of the United States Navy and its officers, including all aspects of warnings associated with the equipment. (*Id.*) Accordingly, BUFFALO PUMPS was acting under an officer or agent of the United States within the meaning of 28 U.S.C. § 1442(a)(1).

7. **Legal Authorities.** Should plaintiffs file a motion to remand in this case, BUFFALO PUMPS requests an opportunity to respond more fully in writing, but, for now, offers the following authorities:

8. Removal is appropriate where, as here, the removing party (1) acted under the direction of a federal officer; (2) raises a colorable federal defense to plaintiffs' claims and (3) can demonstrate a causal nexus between plaintiffs' claims and the acts it performed under color of federal office. *Mesa v. California*, 489 U.S. 121, 124-25 (1989).

9. In 2006, the Ninth Circuit unequivocally stated that "the Supreme Court has mandated a generous interpretation of the federal officer removal statute . . . [and] has held that the right of removal is absolute for conduct performed under color of federal office, and has insisted that the policy favoring removal should not be frustrated by a narrow, grudging interpretation of § 1442(a)(1)." *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citations omitted). In light of the *Durham* court's ruling, California federal district courts have repeatedly interpreted section 1442 broadly in favor of removal where a manufacturer of equipment demonstrates that it acted under the direction of a federal officer, raises a colorable federal defense to plaintiffs' claims and establishes a causal connection between its alleged action under the control of a federal officer and plaintiffs' claims. *See, e.g., Ballenger v. Agco Corp.*, 2007 WL 1813821 (N.D. Cal. June 22, 2007) (a copy of Judge Wilken's Order is attached as **Exhibit 4**); *Scanlon v. Asbestos Companies, et al.* CV 10-7264-SVW (JCGx) (a

copy of Judge Wilson’s Order is attached as **Exhibit 5**); *Wright v. A.W Chesterton, Inc.*, CV 07-05403MJJ (a copy of Judge Jenkin’s Order is attached as **Exhibit 6**); *Oberstar v. CBS Corp.*, CV 08-118PA (JWJx) (a copy of this order is attached as **Exhibit 7**); *Jenkins v. Allied Packing and Supply, Inc.* 09 CV101-DMS, (a copy of this order is attached as **Exhibit 8**).

10. As recognized in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), BUFFALO PUMPS has a federal defense to this action: i.e., government contractor immunity from liability for injuries arising from any exposure to asbestos-containing equipment on board United States Navy vessels, or at U.S. Navy land based installations, insofar as they were manufactured or supplied by BUFFALO PUMPS. See also *Carley v. Wheeled Coach*, 991 F.2d 1117, 1123 (3d Cir. 1993); *Kleeman v. McDonnell Douglas Corp.*, 890 F.2d 698, 700 (4th Cir. 1989); *Garner v. Santoro*, 865 F.2d 629, 634 (5th Cir. 1991).

11. Removal on federal officer (e.g., federal contractor) grounds is also allowed in failure to warn cases. *Getz v. The Boeing Co.*, 654 F. 3d 852 (9th Cir. Aug. 2, 2011). In *Getz*, the court held that the government contractor defense is available in “failure to warn” actions where the evidence shows that the “government exercised [] discretion” in that “the [Navy] considered, reviewed, and determined which warnings to provide. . . .” *Id.* at 867.

12. Similarly, in *Kerstetter v. Pacific Scientific Co.*, 210 F. 3d 431, 438 (5th Cir.) *cert. denied* 519 U.S. 919 (2000), the court held that the government contractor defense is available in “failure to warn” actions where the evidence shows that the lack of a warning reflects governmental direction and control rather than the unfettered discretion of the product’s manufacturer. As noted in *Kerstetter*, “[t]he government need not prepare the specifications to be considered to have approved them.” *Id.* at 435. The only material issue is whether the manufacturer’s designs and specifications were subjected to “substantial review” rather than a mere “rubber stamp” approval. *Id.* Substantial review is established

1 where there is evidence of a “continuous back and forth” between the contractor
2 and the government.” *Id.* In this regard, “[t]he specifications need not address the
3 specific defect alleged; the government need only evaluate the design feature in
4 question.” *Id.* Applying these general principals to “failure to warn” claims, the
5 fact that government specifications or regulations did not specifically preclude the
6 exact warning desired by a plaintiffs does not take a “failure to warn” claim
7 outside the scope of a government contractor defense, so long as the government
8 was generally involved in decisions relating to product warnings and was aware of
9 the hazard in question. *Id.* at 438.

10 13. Further, according to Ret. Admiral Roger Horne: “The Navy retained
11 the final say over the design of any piece of equipment and made the ultimate
12 decision regarding how to resolve an engineering disagreement between the Navy
13 and an outside supplier. Without prior discussion, approval and acceptance by the
14 Navy, a warning related to asbestos hazards would not have been permitted.” See
15 **Exhibit 2**, page 5 at ¶ 12.)

16 14. “[A]ll equipment, including pumps supplied by BUFFALO PUMPS
17 for use aboard Navy vessels, was manufactured pursuant to Navy specifications
18 under close supervision by personnel employed by the Navy and approved for
19 installation aboard these vessels exclusively by the Navy and its designated
20 officers. Any warning purportedly required by state law would not have found its
21 way into a ship as a permanent label on a pump or as a warning in accompanying
22 written materials unless it had been required specifically in the specifications for
23 the product that were issued by the Navy.” *Id.* at ¶ 15.

24 15. As explained in the declaration of Martin Kraft: “In the design phase
25 of the pump project, as in all other phases, the Navy retained ultimate decision
26 authority over the design of the pumps. If engineering disagreements arose
27 between the Navy and an outside design consultant, the Navy controlled the design
28 adopted. All pumps supplied by BUFFALO PUMPS to the Navy were built in

1 accordance with the Navy specifications or other technical documentation
2 identified in applicable contract documents.” See **Exhibit 3**, page 3 at ¶ 8.

3 16. In addition: “Navy specifications or other technical documents
4 identified in applicable contract documents required BUFFALO PUMPS to submit
5 for approval and acceptance by the federal government drafts of any manuals,
6 drawings or other written materials required to be provided with regard to pumps it
7 manufactured for the Navy. These requirements were far more detailed and
8 stringent than those imposed by commercial customers. (Exhibit A at 3.5; 3.6;
9 Exhibit B at 3.27; 3.28).” *Id* at ¶ 13.

10 17. This approval and acceptance process was not merely a process of
11 submission by BUFFALO PUMPS of drawings and manuals. The Navy’s review
12 encompassed all aspects of the technical manuals and other written materials
13 submitted to it for approval in the pump design and manufacture process. Based
14 on my experience and my review of historical materials, I am aware that the Navy
15 required specific changes to the content and wording of manuals submitted by
16 BUFFALO PUMPS and other naval equipment manufacturers. These changes
17 included specific edits to cautionary and instructional language, and including
18 warnings and cautions. Examples of correspondence of this type are attached as
19 Exhibit C.” *Id* at ¶ 14.

20 18. BUFFALO PUMPS is not required to notify and obtain the consent of
21 any other defendant in this action in order to remove plaintiffs’ action as a whole
22 under 28 U.S.C. §1442(a)(1). *Ely Valley Mines, Inc. v. Hartford Accident Indem.*
23 *Co.*, 644 F.2d 1310, 1315 (9th Cir. 1981); *Akin v. Ashland Chem. Co.*, 156 F.3d
24 1030, 1034-35 (1998).

25 19. A properly removed case cannot be remanded for discretionary or
26 policy reasons, such as allegations of related state cases or contentions that judicial
27 economy compels remand. *Thermitron Products, Inc. v. Hermansdorfer*, 423 U.S.
28 336, 343-44 (1976); *Elrad v. United Life & Accident Ins. Co.*, 624 F. Supp. 742,

1 743 (N.D. Ill. 1985).

2 20. BUFFALO PUMPS has attached those documents required by 28
3 U.S.C. section 1446(a) and (b) and the local rules of the United States District
4 Court, Central District of California, including a copy of the Summons and
5 Complaint filed against it by the plaintiff. **Exhibit 1.**

6 WHEREFORE, defendant BUFFALO PUMPS respectfully requests that the
7 above action now pending against it in the Superior Court of California, County of
8 Los Angeles, be removed to this Court.

9
10 Respectfully submitted,

11 Dated: September 23, 2022

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merger to BUFFALO PUMPS, INC
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